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elements of ownership,—possession, and what has been termed an "equitable interest". 18 Columbia Law Rev. 103, 116. Some American jurisdictions have followed this English rule, *Bunday v. Columbus Machine Co.* (1906) 143 Mich. 10, 106 N. W. 397, but more American courts seem to take the opposite view. *First Church of Christ Scientist v. Southern Seating etc. Co.* (1913) 76 Wash. 367, 136 Pac. 127; *Roger & Thornton v. Otto Gas etc. Works* (1910) 7 Ga. App. 587, 67 S. E. 700 (*semble*); *Blair v. Johnson* (1903) 111 Tenn. 111, 76 S. W. 912. The Uniform Sales Act, after providing that upon a breach of warranty the vendee may, as in England, accept the goods and sue on the breach, further provides that he may refuse to accept the goods, if the property therein has not passed and maintain an action against the seller for damages for the breach of warranty. Uniform Sales Act § 69 b & c, § 49; *Peuser v. Marsh* (1915) 218 N. Y. 505, 113 N. E. 494 (*semble*). This view recognizes the existence of "special damages", which may very well result from the mere failure of the goods to be of the description contemplated. *New Hamburg Mfg. Co. v. Webb*, *supra*; cf. *Blair v. Johnson*, *supra*. The Uniform Conditional Sales Act, adopted in 1919 by six American jurisdictions, has codified this view of the law. Uniform Conditional Sales Act § 25; see 18 Columbia Law Rev. 122.

WILLS—CONSTRUCTION—DISTRIBUTION PER CAPITA OR PER STIRPES.—A by will bequeathed property to B, her niece, with the provision that if B predecease A, B's issue were to take *per stirpes*, but in case B should survive A leaving issue, then such issue should take in equal shares and proportions. There were various gifts over in default of issue and by specific terms, stirpital distribution was provided for. B survived A and left both children and grandchildren. *Held*, distribution *per stirpes* was intended. *Metropolitan Trust Co. v. Harris*. (1919) 108 Misc. 34, 177 N. Y. Supp. 257.

The word "issue" means *prima facie* descendants rather than children. *Schmidt v. Jewett* (1909) 195 N. Y. 486, 88 N. E. 1110; *Matter of Farmer's Loan & Trust Co.* (1914) 213 N. Y. 168, 107 N. E. 340; *Jackson v. Jackson* (1891) 153 Mass. 374, 26 N. E. 1112. But this construction of the word "issue" does not preclude *per capita* distribution in any jurisdiction. In England in the absence of words showing a contrary intention, issue take *per capita*. *Leigh v. Norbury* (1807) 13 Ves. Jr. *340; *Davenport v. Hanbury* (1796) 3 Ves. Jr. *257; *contra*, *Jackson v. Jackson*, *supra*. In New York, in the absence of a contrary intention, where the words "issue in equal portions" are used, *per capita* distribution will be presumed. *Schmidt v. Jewett*, *supra*; *contra*, *Hall v. Hall* (1885) 140 Mass. 267, 2 N. E. 700 (*semble*). In the instant case, it is improbable that the testatrix intended a stirpital distribution to the issue of the niece in case the niece predeceased her, and a *per capita* distribution in the other event, for it is unlikely that the same issue should take *per stirpes* in one case and not in the other. *Matter of Farmer's Loan & Trust Co.*, *supra*. Moreover in the instant case the general scheme of the will provided for stirpital distribution, and only in the clause in question was such specific provision omitted. In such a case, the court was justified in looking to the general scheme of the will to ascertain the testatrix's intention. *Coates v. Burton* (1906) 191 Mass. 180, 77 N. E. 311; *Dexter v. Inches* (1888) 147 Mass. 324, 17 N. E. 551.